vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1705 OF 2007

P.M. Doshi ... Petitioner

V/s.

B.U. Bhandari Auto Ltd. ... Respondent

Mr.A.D. Patwardhan for Petitioner

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 9, 2007**

P.C.:

. The Labour Court by award dated 15.11.2006 has held that the petitioner is not entitled to any backwages since he had not pleaded that he was not gainfully employed after his services were terminated. According to Mr.Patwardhan, appearing for the Petitioner, the Labour Court has incorrectly relied on the judgment of the Supreme Court in the case of *General Manager, Haryana Roadways vs.Rudhan Singh,* **2006 LLR 849,** for the proposition that it is necessary to plead a fact before leading evidence to prove the same. The learned advocate submits that there is ample evidence on record led by the petitioner to indicate that he was not gainfully employed from the date he was terminated from service till 5.7.2006 when he was reinstated ie.,for a period of 18 months. According to the learned Advocate,

the petitioner has also been crossexamined on this issue and he therefore submits that the evidence must be accepted by the Labour Court and he should be paid backwages for the period during which he did not work.

2. Although the judgment in the case of *General Manager, Haryana Roadways* (supra) may not be relevant on this issue, it is trite law that a person must plead in his statement of claim that he was unemployed after the termination of his services. It is only then that an issue to that effect can be framed by the Labour Court and the parties can lead evidence based on which the Labour Court can decide whether backwages should be awarded. The Labour Court has rightly therefore refused to grant backwages in this case when there is no pleading that the petitioner was not gainfully employed after his services were terminated in November 2004 till he was reinstated on 5.7.2006.

3. Petition rejected.